

AMENDED IN ASSEMBLY MAY 20, 1997
AMENDED IN ASSEMBLY APRIL 28, 1997
AMENDED IN ASSEMBLY APRIL 14, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 1043

**Introduced by Committee on Revenue and Taxation (Caldera
(Chair), Alquist, Aroner, Knox, Machado, and Papan)**

February 27, 1997

An act to amend Sections 6203, 6907, and 7102 of, to add ~~Sections 6358.6 and~~ *Section* 6830.5 to, and to add and repeal Article 2.5 (commencing with Section 7076.1) of Chapter 8 of Part 1 of Division 2 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1043, as amended, Committee on Revenue and Taxation. Sales and use taxes.

(1) The Sales and Use Tax Law imposes a tax upon the gross receipts from the sale in this state of, or the storage, use, or other consumption in this state of, tangible personal property, and requires every retailer engaged in business in this state, as specified, to collect the tax that is imposed on the sale of tangible personal property from the purchaser of that tangible personal property. For purposes of this collection requirement, a "retailer engaged in business in this state" is expressly defined to include, among others, (a) any retailer who, pursuant to a contract with a broadcaster or publisher

located in this state, solicits orders for tangible personal property by means of advertising that is disseminated primarily to consumers located in this state and only secondarily to bordering jurisdictions; and (b) any retailer who, pursuant to a contract with a cable television operator located in this state, solicits orders for tangible personal property by means of advertising that is transmitted or distributed over a cable television system in this state.

This bill would delete these retailers from the definition of a “retailer engaged in business in this state.”

~~(2) The Sales and Use Tax Law provides various exemptions from the taxes imposed by that law.~~

~~This bill would additionally exempt from sales and use taxes feed for consumption by any form of animal life that is held by a nonprofit zoological society, as defined, for exhibition, breeding, research, preservation, protection, or otherwise in furtherance of a nonprofit zoological society’s purpose.~~

~~(3) Existing law requires that interest on any overpayment of sales and use taxes be paid from the first day of the calendar month following the month for which the overpayment was made.~~

This bill would, instead, require that interest on any overpayment of sales and use taxes be paid from the last day of the calendar month following the quarterly period for which the overpayment was made.

~~(4)~~

~~(3) The Sales and Use Tax Law authorizes the State Board of Equalization to contract with persons outside of California for the identification of persons or businesses who may owe taxes or other amounts or to contract for debt collection services with persons outside of California. Existing law allows the board to add the cost of these services to the amount to be identified or collected from the taxpayer.~~

This bill would also authorize the board to enter into agreements with one or more private persons, companies, associations, or corporations for the purpose of collecting taxes, interest, additions to tax, or penalties within the state, and to add the cost of the collection service to the amount to be collected from the taxpayer.

~~(5)~~

(4) The Sales and Use Tax Law permits the State Board of Equalization, if it is not satisfied with the return or returns of the tax or the amount of the tax or other amount, to compute and determine the amount required to be paid upon the basis of facts contained in the return or returns or upon the basis of any information within its possession or that may come into its possession. Existing law permits the board or any person authorized by it in writing to examine the books, papers, records, and equipment of any person selling tangible personal property or any person liable for the use tax.

This bill would additionally authorize the board, until January 1, 2001, to determine which accounts are to be eligible for a managed audit program and would require the board to identify specified information for a person whose account is selected for a managed audit. No person would be required to participate in a managed audit program, but in the case of a liability covered by a managed audit, interest on that liability would be computed at $\frac{1}{2}$ the rate that would otherwise be imposed.

This bill would also make specified findings and declarations of the Legislature in connection with a managed audit program.

~~(6)~~

(5) The Sales and Use Tax Law provides that money in the Retail Sales Tax Fund shall be transferred, as specified.

This bill would make a technical, nonsubstantive change to those provisions.

~~(7)~~

(6) Counties and cities are authorized to impose local sales and use taxes in conformity with state sales and use taxes. Exemptions from state sales and use taxes enacted by the Legislature are incorporated into the local taxes.

Section 2230 of the Revenue and Taxation Code provides that the state will reimburse counties and cities for revenue losses caused by the enactment of sales and use tax exemptions.

This bill would provide that, notwithstanding Section 2230 of the Revenue and Taxation Code, no appropriation is made and the state shall not reimburse local agencies for sales and use tax revenues lost by them pursuant to this bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6203 of the Revenue and
2 Taxation Code is amended to read:

3 6203. Except as provided by Sections 6292 and 6293,
4 every retailer engaged in business in this state and
5 making sales of tangible personal property for storage,
6 use, or other consumption in this state, not exempted
7 under Chapter 3.5 (commencing with Section 6271) or
8 Chapter 4 (commencing with Section 6351), shall, at the
9 time of making the sales or, if the storage, use, or other
10 consumption of the tangible personal property is not then
11 taxable hereunder, at the time the storage, use, or other
12 consumption becomes taxable, collect the tax from the
13 purchaser and give to the purchaser a receipt therefor in
14 the manner and form prescribed by the board.

15 As respects leases constituting sales of tangible personal
16 property, the tax shall be collected from the lessee at the
17 time amounts are paid by the lessee under the lease.

18 “Retailer engaged in business in this state” as used in
19 this section and Section 6202 means and includes any of
20 the following:

21 (a) Any retailer maintaining, occupying, or using,
22 permanently or temporarily, directly or indirectly, or
23 through a subsidiary, or agent, by whatever name called,
24 an office, place of distribution, sales or sample room or
25 place, warehouse or storage place, or other place of
26 business.

27 (b) Any retailer having any representative, agent,
28 salesperson, canvasser, independent contractor, or
29 solicitor operating in this state under the authority of the
30 retailer or its subsidiary for the purpose of selling,
31 delivering, installing, assembling, or the taking of orders
32 for any tangible personal property.

33 (c) As respects a lease, any retailer deriving rentals
34 from a lease of tangible personal property situated in this
35 state.

1 (d) Any retailer soliciting orders for tangible personal
2 property by means of a telecommunication or television
3 shopping system (which utilizes toll-free numbers)
4 which is intended by the retailer to be broadcast by cable
5 television or other means of broadcasting, to consumers
6 located in this state.

7 (e) (1) Any retailer soliciting orders for tangible
8 personal property by mail if the solicitations are
9 substantial and recurring and if the retailer benefits from
10 any banking, financing, debt collection,
11 telecommunication, or marketing activities occurring in
12 this state or benefits from the location in this state of
13 authorized installation, servicing, or repair facilities.

14 (2) This subdivision shall become operative upon the
15 enactment of any congressional act that authorizes states
16 to compel the collection of state sales and use taxes by
17 out-of-state retailers.

18 (f) Any retailer having a franchisee or licensee
19 operating under its trade name if the franchisee or
20 licensee is required to collect the tax under this section.

21 (g) Notwithstanding Section 7262, a retailer specified
22 in subdivision (d), (e), or (f) above, and not specified in
23 subdivision (a), (b), or (c) above, is a “retailer engaged
24 in business in this state” for the purposes of this part and
25 Part 1.5 (commencing with Section 7200) only.

26 (h) (1) For purposes of this section, “engaged in
27 business in this state” does not include the taking of orders
28 from customers in this state through a computer
29 telecommunications network located in this state which
30 is not directly or indirectly owned by the retailer when
31 the orders result from the electronic display of products
32 on that same network. The exclusion provided by this
33 subdivision shall apply only to a computer
34 telecommunications network that consists substantially
35 of on-line communications services other than the
36 displaying and taking of orders for products.

37 (2) This subdivision shall become inoperative upon
38 the earlier of the following dates:

1 (A) The operative date of provisions of a congressional
2 act that authorize states to compel the collection of state
3 sales and use taxes by out-of-state retailers.

4 (B) The date five years from the effective date of the
5 act adding this subdivision.

6 SEC. 2. ~~Section 6358.6 is added to the Revenue and~~
7 ~~Taxation Code, to read:~~

8 ~~6358.6. (a) There are exempted from the taxes~~
9 ~~imposed by this part, the gross receipts from the sale in~~
10 ~~this state of, and the storage, use, or other consumption~~
11 ~~in this state of, feed for consumption by any form of~~
12 ~~animal life that is held by a nonprofit zoological society for~~
13 ~~exhibition, breeding, research, preservation, protection,~~
14 ~~or otherwise in furtherance of a nonprofit zoological~~
15 ~~society's purpose.~~

16 ~~(b) For purposes of this section, a "nonprofit~~
17 ~~zoological society" includes both of the following:~~

18 ~~(1) A zoological society operated for charitable,~~
19 ~~educational, or scientific purposes and qualified for~~
20 ~~exemption under Section 501(c)(3) of the Internal~~
21 ~~Revenue Code.~~

22 ~~(2) A zoological park or aquarium owned or operated~~
23 ~~by any city, county, or other instrumentality of any state~~
24 ~~or foreign government.~~

25 SEC. 3. ~~Section 6830.5 is added to the Revenue and~~
26 ~~Taxation Code, to read:~~

27 ~~6830.5. For the purpose of collecting taxes, interest,~~
28 ~~additions to tax, or penalties, the board may enter into~~
29 ~~agreements with one or more private persons,~~
30 ~~companies, associations, or corporations providing these~~
31 ~~services within this state. The agreement may provide, at~~
32 ~~the discretion of the board, the rate of payment and the~~
33 ~~manner in which compensation for services shall be paid.~~
34 ~~The compensation may be added to the amount required~~
35 ~~to be collected by the collection agency from the tax~~
36 ~~debtor. The board shall provide the necessary~~
37 ~~information for the contractor to fulfill its obligation~~
38 ~~under the agreement.~~

39 SEC. 4.

1 *SEC. 3.* Section 6907 of the Revenue and Taxation
2 Code is amended to read:

3 6907. Interest shall be paid upon any overpayment of
4 any amount of tax at the modified adjusted rate per
5 month established pursuant to Section 6591.5, from the
6 last day of the calendar month following the quarterly
7 period for which the overpayment was made. However,
8 no refund or credit shall be made of any interest imposed
9 upon the person making the overpayment with respect
10 to the amount being refunded or credited.

11 The interest shall be paid:

12 (a) In the case of a refund, to the last day of the
13 calendar month following the date upon which the
14 person making the overpayment, if he or she has not
15 already filed a claim, is notified by the board that a claim
16 may be filed or the date upon which the claim is approved
17 by the board, whichever date is the earlier.

18 (b) In the case of a credit, to the same date as that to
19 which interest is computed on the tax or amount against
20 which the credit is applied.

21 ~~SEC. 5.~~

22 *SEC. 4.* Article 2.5 (commencing with Section 7076.1)
23 is added to Chapter 8 of Part 1 of Division 2 of the
24 Revenue and Taxation Code, to read:

25
26 Article 2.5. Managed Audit Program
27

28 7076.1. The Legislature finds and declares that the
29 mission of the State Board of Equalization in the
30 administration and collection of taxes is to provide
31 informative and responsive services to the taxpayer, to
32 provide fair, firm, and uniform treatment of the taxpayer,
33 and to perform these functions with quality and
34 efficiency. The commitment to a philosophy of service
35 and accountability to the public can be effectively
36 furthered through a managed audit program. As a result
37 of a managed audit, the taxpayer will be educated as to
38 the proper tax treatment of the issues as well as to the
39 failings of any internal procedures, so that the taxpayer

1 can put into place procedures and practices that will
2 ensure compliance in the future.

3 The Legislature further finds that the managed audit
4 program will permit the board to reallocate resources to
5 revenue-generating activity and reflects an efficient
6 approach in performing day-to-day audit work. The
7 Legislature finds that the advantages to the state include
8 a reduction in the number of audits subject to resolution
9 by the administrative appeals process; a reduction in
10 litigation; and resolution of taxability issues as a condition
11 of the managed audit. The Legislature further finds and
12 declares that the advantages to the taxpayer include
13 taxpayer education; future tax compliance; taxpayer
14 experience with the audit process; an ongoing
15 cooperative relationship with the State Board of
16 Equalization; decreased disruption of regular business
17 activities; and resolution of the audit period. The
18 Legislature finds that the managed audit program
19 permits a person to critically examine, within the
20 timeframe specified by the board, the internal controls
21 and accounting records of its business enterprise in which
22 significant tax error could occur, and to determine the
23 correct measure of tax. The Legislature further finds that
24 the managed audit program is a logical response to
25 demands for efficient examinations without severely
26 compromising work product.

27 7076.2. The State Board of Equalization shall
28 determine, consistent with the efficient use of audit
29 resources, which accounts are to be eligible for the
30 managed audit program, provided that no person shall be
31 required to participate in the managed audit program.
32 Persons whose accounts are eligible for the managed
33 audit program shall include any person who meets all of
34 the following criteria:

35 (a) Any person who has not received written
36 notification pursuant to Section 6471 that he or she is
37 required to make prepayments of tax.

38 (b) Any person whose business involves few or no
39 statutory exemptions.

1 (c) Any person whose business involves a single or
2 small number of clearly defined taxability issues.

3 (d) Any person who agrees to participate in the
4 managed audit program.

5 (e) Any person who has the resources to comply with
6 the managed audit instructions provided by the board.

7 7076.3. (a) If a person's account is selected for a
8 managed audit, the person shall review and examine the
9 books, records, and equipment to determine any
10 unreported liability for the audit period, and make
11 available all computations and records reviewed for
12 verification by the board. The board shall identify for the
13 person all of the following:

14 (1) The audit period covered by the managed audit.

15 (2) The types of transactions covered by the managed
16 audit.

17 (3) The specific procedures the person is to follow in
18 determining any liability.

19 (4) The records to be reviewed by the person.

20 (5) The manner in which the types of transactions are
21 to be scheduled for review.

22 (6) The time period for completion of the managed
23 audit.

24 (7) The time period for the payment of the liability
25 and interest.

26 (8) Any other criteria as the board may require for
27 completion of the managed audit.

28 (b) The information provided by the person shall be
29 the same information that is required for the completion
30 of any other audit that the board may conduct.

31 7076.4. Nothing in this article shall limit the board's
32 authority to examine the books, papers, records, and
33 equipment of a person under Section 7054.

34 7076.5. Upon completion of the managed audit and
35 verification by the board, interest shall be computed at
36 one-half the rate that would otherwise be imposed for
37 liabilities covered by the audit period. Payment of the
38 liabilities and interest shall be made within the time
39 period specified by the board. If the requirements for the
40 managed audit are not satisfied, the board may proceed

1 to examine the records of the person in a manner to be
2 determined by the board.

3 7076.6. The provisions of Section 6596 shall not apply
4 to a managed audit conducted pursuant to this article.

5 7076.7. This article shall remain in effect only until
6 January 1, 2001, and as of that date is repealed; however,
7 any managed audit commenced pursuant to Section
8 7076.3 before January 1, 2001, may be completed by the
9 board thereafter and the person whose account is audited
10 shall remain eligible for the interest rate computation
11 specified in Section 7076.5.

12 ~~SEC. 6.~~

13 SEC. 5. Section 7102 of the Revenue and Taxation
14 Code is amended to read:

15 7102. The money in the fund shall, upon order of the
16 Controller, be drawn therefrom for refunds under this
17 part, and pursuant to Section 1793.25 of the Civil Code, or
18 be transferred in the following manner:

19 (a) (1) All revenues, less refunds, derived under this
20 part at the $4\frac{3}{4}$ -percent rate, including the imposition of
21 sales and use taxes with respect to the sale, storage, use,
22 or other consumption of motor vehicle fuel which would
23 not have been received if the sales and use tax rate had
24 been 5 percent and if motor vehicle fuel, as defined for
25 purposes of the Motor Vehicle Fuel License Tax Law
26 (Part 2 (commencing with Section 7301)), had been
27 exempt from sales and use taxes, shall be estimated by the
28 State Board of Equalization, with the concurrence of the
29 Department of Finance, and shall be transferred
30 quarterly to the Transportation Planning and
31 Development Account, a trust fund in the State
32 Transportation Fund.

33 (2) All revenues, less refunds, derived under this part
34 at the $4\frac{3}{4}$ -percent rate, resulting from increasing after
35 December 31, 1989, the rate of tax imposed pursuant to
36 the Motor Vehicle Fuel License Tax Law on motor
37 vehicle fuel, as defined for purposes of that law, shall be
38 transferred quarterly to the Transportation Planning and
39 Development Account, a trust fund in the State
40 Transportation Fund.

1 (3) All revenues, less refunds, derived under this part
 2 at the $4\frac{3}{4}$ -percent rate from the imposition of sales and
 3 use taxes on fuel, as defined for purposes of the Use Fuel
 4 Tax Law (Part 3 (commencing with Section 8601)) and
 5 the Diesel Fuel Tax Law (Part 31 (commencing with
 6 Section 60001)), shall be estimated by the State Board of
 7 Equalization, with the concurrence of the Department of
 8 Finance, and shall be transferred quarterly to the
 9 Transportation Planning and Development Account, a
 10 trust fund in the State Transportation Fund.

11 (4) All revenues, less refunds, derived under this part
 12 from a rate of more than $4\frac{3}{4}$ percent pursuant to Sections
 13 6051.1 and 6201.1 for the period December 1, 1989, to June
 14 5, 1990, inclusive, shall be transferred to the Disaster
 15 Relief Fund created by Section 16419 of the Government
 16 Code.

17 (5) All revenues, less refunds, derived under this part
 18 from a rate of more than $4\frac{3}{4}$ percent pursuant to Sections
 19 6051.1 and 6201.1 for the period June 6, 1990, to December
 20 31, 1990, inclusive, which is attributable to the imposition
 21 of sales and use taxes with respect to the sale, storage, use,
 22 or other consumption of tangible personal property other
 23 than fuel, as defined for purposes of the Use Fuel Tax Law
 24 (Part 3 (commencing with Section 8601)), shall be
 25 transferred to the Disaster Relief Fund created by
 26 Section 16419 of the Government Code.

27 (6) All revenues, less refunds, derived under this part
 28 from a rate of more than $4\frac{3}{4}$ percent pursuant to Sections
 29 6051.1 and 6201.1 for the period June 6, 1990, to December
 30 31, 1990, inclusive, which is attributable to the imposition
 31 of sales and use taxes with respect to the sale, storage, use,
 32 or other consumption of fuel, as defined for purposes of
 33 the Use Fuel Tax Law (Part 3 (commencing with Section
 34 8601)), shall be transferred to the Disaster Relief Fund
 35 created by Section 16419 of the Government Code.

36 (7) All revenues, less refunds, derived under this part
 37 from the taxes imposed pursuant to Sections 6051.2 and
 38 6201.2 shall be transferred to the Sales Tax Account of the
 39 Local Revenue Fund for allocation to cities and counties
 40 as prescribed by statute.

(8) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.6 and 6201.6 shall be transferred to the Interim Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(9) All revenues, less refunds, derived from the taxes imposed pursuant to Section 35 of Article XIII of the California Constitution shall be transferred to the Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(10) An amount equal to all revenues, less refunds, derived under this part at a $4\frac{3}{4}$ -percent rate for the period between January 1, 1994, and July 1, 1994, from the increase in sales and use tax revenue attributable to the increase in the rate of the federal motor vehicle fuel tax between January 1, 1993, and the rate in effect on January 1, 1994, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and an amount equal to that amount, but not exceeding seven million five hundred thousand dollars (\$7,500,000) shall be transferred from the Retail Sales Tax Fund to the Small Business Expansion Fund created by Article 5 (commencing with Section 14030) of Chapter 1 of Part 5 of Division 3 of Title 1 of the Corporations Code.

(b) The balance shall be transferred to the General Fund.

(c) The estimates required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1), (2), and (3) of subdivision (a) shall be made quarterly.

(d) Notwithstanding the designation of the Transportation Planning and Development Account as a trust fund pursuant to subdivision (a), the Controller may use the Transportation Planning and Development Account for loans to the General Fund as provided in

1 Sections 16310 and 16381 of the Government Code. The
2 loans shall be repaid with interest from the General Fund
3 at the Pooled Money Investment Account rate.

4 (e) The Legislature may amend this section, by statute
5 passed in each house of the Legislature by rollcall vote
6 entered in the journal, two-thirds of the membership
7 concurring, if the statute is consistent with, and furthers
8 the purposes of this section.

9 ~~SEC. 7.~~

10 *SEC. 6.* Notwithstanding Section 2230 of the Revenue
11 and Taxation Code, no appropriation is made by this act
12 and the state shall not reimburse any local agency for any
13 sales and use tax revenues lost by it under this act.

